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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE CANTU,

Defendant and Appellant.

B219730

(Los Angeles County
Super. Ct. No. BA352691)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Dennis J. Landin, Judge. Affirmed.

Murray A. Rosenberg, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, David C. Cook and
Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant George Cantu appeals from the judgment entered following his conviction by jury of mayhem, assault with a deadly weapon, and assault by means of force likely to produce great bodily injury, with a finding that he personally inflicted great bodily injury upon the victim. (Pen. Code, §§ 203, 245, subd. (a)(1), 12022.7, subd. (a).) He contends there is insufficient evidence to support the verdict and the trial court erred by admitting evidence of a prior uncharged offense. We affirm the judgment.

STATEMENT OF FACTS

The Prosecution Case

At the time of the incident, the victim Israel Sanchez was in custody at the Los Angeles County Men's Central Jail due to his arrest for driving under the influence. Defendant was a cellmate. At around midnight on January 29, 2009, Sanchez began doing pushups in the cell. Defendant told him to stop; however, Sanchez ignored him and continued to exercise. As soon as Sanchez completed his pushups, defendant jumped off his bunk, approached Sanchez, and began punching him. After Sanchez was able to land a blow on defendant, the altercation ended. Defendant sat on his bunk.

Sanchez thought the fight was over. Moments later, defendant got up and again began punching Sanchez. Sanchez noticed that the blows felt different and he realized his left cheek had been cut. The unarmed Sanchez did not fight back. Defendant cut him several more times in the face, resulting in Sanchez losing part of his cheek. When asked why he did not resist, Sanchez explained that he was scared of defendant. His fear was due to a comment defendant made a couple of days prior to the attack. Defendant claimed to have cut another individual in the throat. Recalling that statement, Sanchez said he chose to simply move his head to protect any vital area. He said his goal was to simply come away from the attack alive.

After the assault ended, Sanchez did not call out for help, believing that might cause defendant to cut him again. Instead, Sanchez tried to stop the bleeding. He waited

until later in the morning to report the altercation and receive treatment. Sanchez's wounds required 21 stitches to close.

On January 29, Los Angeles County Deputy Sheriff Louis Harris was working at the Men's Central Jail. The cell in which Sanchez and defendant were housed was one of his assigned units. During pill call when the inmates came out of their cells, Harris's supervisor called him over to the hallway. There, Harris saw Sanchez and noticed that he had a "large scab on his cheek." Harris and the supervisor took Sanchez to an area away from the other inmates to conduct an initial investigation. After speaking to Sanchez, Harris went to defendant's cell. Harris examined him for injuries and noticed that he had "two slash marks on his right middle finger[] and . . . a busted lip," as well as swollen knuckles on his right hand.

Harris advised defendant of his *Miranda*¹ rights and asked him what happened in the cell. Defendant said that Sanchez was doing pushups when he slipped and cut his face on the bars of the bunk bed. Harris searched the cell and did not find a blade of any kind. He said that all inmates received a toiletry kit that included a disposable single blade razor.

The Defense Case

Defendant testified that in the early morning hours of January 29, he was asleep on his bunk. Sanchez was on the bunk next to him. Defendant was awakened when he felt someone touching his groin. He opened his eyes and asked Sanchez if he had grabbed his genitals. Sanchez told defendant to keep his voice down. Defendant pushed Sanchez away.

Sanchez got off the bunk and went to "his shelves." As defendant sat on his bunk, Sanchez walked toward him and swung his hand, striking defendant on the cheek and cutting his lip. Defendant grabbed Sanchez's arm, causing a small razor to fall from Sanchez's hand onto the cell floor. As defendant bent down and attempted to cover the

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

razor with his hand, Sanchez jumped on his back and began biting him on the back of the head. As defendant was facing the floor, he managed to get the razor and swung it behind him. In doing so, he struck Sanchez's cheek with the blade. As they continued to wrestle, defendant threw the razor out of the cell. He stated Sanchez bled on him. Defendant took off his bloody shorts and threw them in the trash outside of the cell. Defendant said he did not tell the deputies about the fight because he did not want to be labeled a snitch. He admitted that he had suffered a prior felony conviction for theft.

Rebuttal Evidence

Deputy Harris was recalled and testified that the inmates have a clear plastic bag hanging outside the cell that serves as a trash receptacle. As part of his duties, he walks by the cells looking for anything out of the ordinary. He said that he would have noticed bloody clothing if it had been in one of the trash bags and he did not observe any during his patrol of the cell area on the morning of the assault. Nor did he see a razor on the floor in the hall. When Harris spoke to defendant, he did not notice bite marks on the back of defendant's head. Harris claimed that he would have seen such marks because defendant's hair was very short.

DISCUSSION

I. Sufficiency of the Evidence

Defendant notes what he perceives as discrepancies in the evidence—the fact that no one found a razor or the bloody clothing Sanchez claimed to have used to stop the bleeding and that Deputy Harris did not observe defensive wounds on Sanchez—and contends that “no reasonable trier of fact could determine who was the aggressor and who acted in self-defense.” We are not persuaded.

“When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable,

credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) “We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness’s credibility. [Citation.]” (*Ibid.*) “Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Defendant is correct that this case represented a classic battle of credibility. The jury believed Sanchez’s version of the incident, and we will decline defendant’s invitation to reweigh the testimony. Notwithstanding defendant’s claim to the contrary, Sanchez’s testimony was neither physically impossible nor inherently improbable. Although a razor and a large amount of blood were not discovered, there was no dispute that each man suffered injuries that were consistent with the use of a blade. The only question for the jury to resolve was—who was the aggressor? We will not disturb the jury’s conclusion that it was defendant.

II. The Admission of Evidence Concerning Defendant’s Prior Act

During the cross-examination of Sanchez, defendant’s counsel repeatedly brought out the fact that Sanchez took no defensive action during the attack. The questioning was as follows:

“[Counsel:] So he came at you, and you’re saying he sliced you in the face?

“[Sanchez:] Right. When I seen him throwing — or about to slice me, I kind of moved to avoid the punch, but that’s when he got me the first time.

“[Counsel:] Okay. Were you covering your face?

“[Sanchez:] Like I told you, I didn’t want to make no moves because I didn’t want to get cut somewhere where I can really get hurt.

“[Counsel:] There’s someone slicing your face, and you’re not making any defensive action to stop it?

“[Sanchez:] No, because he has a sharp object. [The remainder of the answer was stricken as nonresponsive and Sanchez was admonished to answer only the question asked.]

“[Counsel:] So I’m going to back up. Someone is slicing you on the side of your face; correct?

“[Sanchez:] Correct.

“[Counsel:] You’re making no move in any defensive way to put your hands up in front of your neck or in front of your face?

“[Sanchez:] No. I’m just moving my head to the sides.

“[Counsel:] Okay. So he sliced you not only once, but he sliced you —

“[Sanchez:] Several times.

“[Counsel:] Several times?

“[Sanchez:] Correct.

“[Counsel:] During this whole time, you’re not making any defensive moves?

“[Sanchez:] Not with my hands. That’s why I don’t have no cuts on my hands.”

“[Counsel:] You have no defensive cuts on your hands or arms?

“[Sanchez:] No.

“[Counsel:] It’s true that you were on top of [defendant], and that’s why you weren’t making defensive moves; isn’t that correct? [An objection was lodged and overruled.]

“[Sanchez:] No, that’s not correct.

“[Counsel:] That’s not correct?

“[Sanchez:] Not correct.

“[Counsel:] You were just standing there while he’s cutting your face?

“[Sanchez:] Yes.

“[Counsel:] No further questions at this time, Your Honor.”

On redirect, the prosecutor's first question asked Sanchez why he simply stood while defendant was cutting his face. Sanchez began to answer that it was because defendant had mentioned cutting someone on a prior occasion. Defense counsel objected and asked to approach the bench. At sidebar, he argued that he had no notice of a prior incident and that the testimony was irrelevant. The prosecutor responded that she had just learned of the incident and counsel had placed Sanchez's response to defendant's attack at issue. "And I think the witness is explaining why he's standing there letting [defendant] slice him." The court agreed with the prosecutor and ruled it would allow the testimony.

Sanchez explained why he did not fight back when defendant was attacking him with the razor. He said defendant told him that in the past he had cut another individual. Defendant stated the individual ended up being badly hurt after being cut in the throat. Sanchez told the jury, "So that night it came to my mind that if I put up a fight, I might end up with my throat cut too. So my reaction — my best reaction is if I just move my head and try to avoid the cuts, I might end up with a scar, but I'll live. If I put up a fight, I might end up not making it out of my cell. That was the best — my best thought I could get at the time of how to try to make it alive out of it." The prosecutor asked no further questions.

Defendant contends the court committed reversible error by allowing evidence of his prior attack. He argues, "[t]he general rule is that evidence of crimes other than those charged in the information are inadmissible when offered solely to prove the criminal disposition or propensity of the accused." Although defendant accurately states the law, he mistakenly asserts that it applies here.

The trial court did not allow the testimony for the purpose of establishing defendant's propensity for violence. Nor did it permit the evidence pursuant to Evidence Code section 1101, subdivision (b) to prove motive, identity, or intent. The court believed the evidence was relevant to explain why Sanchez made no attempt to defend himself against an armed attack. It was correct.

It was clear the defense was attempting to characterize Sanchez as the attacker, not the victim. If he were the attacker, the defense theorized, that would explain the absence of defensive wounds. It was appropriate for the prosecutor to proffer an alternative explanation. Sanchez, in fear of being mortally wounded, merely tried to avoid being cut by moving his head. He did not want to expose his throat to being sliced with the razor. Defendant's statement that he had previously cut someone's throat and had badly injured the individual was relevant to explain Sanchez's conduct.

Defendant urges the trial court abused its discretion by admitting the evidence because it was more prejudicial than probative. We disagree. A trial court's exercise of discretion in admitting evidence will not be disturbed unless the court "exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice [citation]." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.) Here, as we have discussed, the evidence was not admitted to prove that defendant acted in conformity with past conduct. Significantly, the jury was not advised that it could use the evidence for that purpose. Thus, the evidence's potential for prejudice was limited. Moreover, defendant's statement that he had cut someone previously was not admitted for its truth. As noted, it was relevant to explain the victim's conduct. This is illustrated by the question that was posed to him by defense counsel. He was asked, "I'm asking you a question. You think that [defendant] sliced someone's neck before; correct?" Sanchez responded, "Like I told you, that's what he said." Thus, the jury was not asked to consider that defendant had, in fact, committed a prior offense. The statement was relevant simply because Sanchez believed it to be true. Under those circumstances, the prejudicial effect of the testimony did not outweigh its probative value. The court did not abuse its broad discretion in admitting the statement.

Defendant also complains the court allowed evidence that he had been convicted of a prior assault. We observe that the evidence was elicited by defense counsel. He asked Sanchez if defendant said that he got in trouble for the prior assault. Sanchez answered, "He just said he got — he did eight years in prison for that." Any alleged error was invited.

Even assuming error, reversal is not required. In the final analysis, the jury made a credibility call. In order to conclude that defendant had committed a prior bad act, the jury would have had to believe Sanchez's testimony that defendant admitted to having done so. It is unlikely that the jury believed Sanchez when he said defendant revealed he had previously cut another person, disbelieved Sanchez when he testified that defendant was the aggressor, and convicted defendant nonetheless. In other words, the jury had to believe the totality of Sanchez's testimony in order to find defendant guilty. As a result, it is not reasonably probable that the jury would have reached a different verdict had defendant's statement not been admitted, and reversal is not warranted. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P.J.

MANELLA, J.